

NSF master list of designated pollutants; or

(b) Any element, substance, compound, or mixture including disease causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through the food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.

Prohibited Discharge Levels—discharge, release, or disposal levels, or amounts, of designated pollutants that NSF has determined may not be exceeded even with a permit.

Hazardous Waste—any designated pollutant which is no longer fit for its intended uses and poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Finally, we believe that a federal inter-agency group, including members from organizations outside government, should be created to advise and assist the NSF team of scientists and lawyers who must draft these regulations. Nominations of qualified individuals from government agencies and other public or private organizations to serve on this task force are welcome. All nominations should be submitted in a nomination letter sent to NSF's Deputy General Counsel, who is chairing the NSF team and will also head to inter-agency advisory group, no later than May 18, 1990.

Persons wishing to participate in the hearing should send a separate written request to the Office of the General Counsel, National Science Foundation, 1800 G Street NW., Washington, DC 20550, to be received no later than close of business Tuesday, May 15, 1990. The request to participate must include the following information: (1) The name of the witness, (2) the name of the agency, organization or association the witness is representing, and (3) a brief summary of the witness' remarks. Depending on the number of requests received, participants may be limited to a ten-minute oral presentation. Written submissions will be welcome in lieu of or in addition to oral comments. NSF will also accept subsequent written submissions, both new and supplemental, up to 30 days after the public hearing. Additional written comments will, of course, be solicited in

response to any proposed regulations issued by the Foundation in the future.

By the National Science Foundation.

April 18, 1990.

Robert M. Andersen,
Deputy General Counsel.

[FR Doc. 90-0235 Filed 4-19-90; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 900495-0095]

RIN 0648-AC77

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 5 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This proposed rule would (1) extend the management area for Atlantic migratory groups of king and Spanish mackerel through the Mid-Atlantic Fishery Management Council's area of authority, that is, the exclusive economic zone (EEZ) off the States of New York through Virginia; (2) revise the fishing year for Gulf migratory group Spanish mackerel; (3) revise the definition of "overfishing," add a separate definition of "overfished," and add a definition of "conflict;" (4) make the South Atlantic Fishery Management Council responsible for pre-season adjustments of total allowable catch (TAC) and bag limits for the Atlantic migratory groups of king and Spanish mackerel and the Gulf Fishery Management Council responsible for such adjustments for the Gulf migratory groups of king and Spanish mackerel; (5) specify that the earned income requirement to qualify for an annual permit for a vessel owned by a corporation must be met by a shareholder or officer of the corporation or the vessel operator; (6) redefine recreational bag limits as daily bag limits; (7) prohibit the use of gear other than hook-and-line and run-around gillnets to fish in the EEZ for king mackerel from the Gulf migratory group; (8) impose a daily bag limit of two cobia per person; (9) establish a minimum size limit of 12 inches (30.5 centimeters) fork

length or 14 inches (35.6 centimeters) total length for king mackerel and require that king mackerel be landed with head and fins intact; (10) remove the provision allowing sale of mackerel taken under a bag limit; (11) charge a fee to cover the administrative costs of issuing permits; (12) clarify the requirement that fish, subject to a minimum size limit, must be landed with head and fins intact; and (13) make minor corrections and clarifications to the regulations and conform them to current usage. The intended effects are to continue rebuilding the king and Spanish mackerel resources, provide additional protection for cobia and other coastal migratory pelagic fish, provide equitable access to the available king and Spanish mackerel, improve the management regime, and correct and clarify the regulations.

DATES: Written comments must be received on or before June 1, 1990.

ADDRESSES: Requests for copies of the FMP, which includes a regulatory impact review/environmental assessment (RIR/EA) should be sent to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609 or the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407-4699.

Comments on the proposed rule should be sent to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 5 is a major revision of the FMP. As amended, the FMP would address eleven problems in the fishery as follows:

(1) Gulf and Atlantic group Spanish mackerel and Gulf group king mackerel are below the population levels necessary to produce maximum sustainable yield (MSY), and spawning stocks have been reduced to the extent that recruitment has been affected. The harvest levels of Atlantic group king mackerel are close to their upper limit of

acceptable biological catch. Uncontrolled fishing would further reduce biomass.

(2) Insufficient data:

(a) Recreational catch statistics are not available in a sufficiently timely manner to track catches for quota purposes.

(b) Additional biological data, statistical data on both the recreational and commercial fisheries, and economic information that assesses the impact of regulations and allocations are needed.

(3) Intense conflicts and competition exist between recreational and commercial users of the mackerel stocks and among commercial users employing different gears.

(4) The existence of separate state and Federal jurisdictions and lack of coordination between these two entities makes biological management difficult since, in some instances, the resource may be fished beyond the allocation in state waters.

(5) The condition of the cobia stock is not known and increased landings over the last ten years have prompted concern about overfishing.

(6) Lack of information on multiple stocks or migratory groups of king mackerel which may mix seasonally confounds and complicates management.

(7) Large catches of mackerel over a short period cause allocations/quotas and total allowable catch (TAC) to be exceeded before closures can be implemented. Therefore, some users have obtained a share in excess of their allocation.

(8) Closures of fisheries and reversion of bag limits to zero due to the filling of allocations/quotas have deprived fishermen, in some geographic areas, of access to a fishery.

(9) Current allocations of Atlantic migratory group Spanish mackerel do not reflect the distribution (i.e., recreational/commercial ratios) of catches during the early to mid-1970s, which was prior to the development of the deep-water run-around gillnet fishery and when the resource was not overfished.

(10) Fish caught and sold under the bag limit contribute to the filling of both the recreational and commercial quotas.

(11) Part-time commercial fishermen compete with full-time commercial fishermen for the available quota.

Problems (3), (4), and (9) remain unchanged from the FMP, as previously amended. The other problems are either revised or added by Amendment 5.

The FMP would contain the following management objectives:

(1) The primary objective of the FMP is to stabilize yield at MSY, allow

recovery of overfished populations, and maintain population levels sufficient to ensure adequate recruitment.

(2) To provide a flexible management system for the resource which minimizes regulatory delay while retaining substantial Council and public input into management decisions and which can rapidly adapt to changes in resource abundance, new scientific information, and changes in fishing patterns among user groups or by area.

(3) To provide necessary information for effective management and establish a mandatory reporting system for monitoring catch.

(4) To minimize gear and user group conflicts.

(5) To distribute the TAC of Atlantic migratory group Spanish mackerel between recreational and commercial user groups based on the catches that occurred during the early to mid 1970s, which is prior to the development of the deep-water run-around gillnet fishery and when the resource was not overfished.

(6) To provide appropriate management to address specific migratory groups of king mackerel.

Objective (5) was approved in Amendment 4 to the FMP and objective (6) would be added by Amendment 5.

To address the problems in the fishery and in pursuit of the objectives of the FMP, as it is proposed to be amended by Amendment 5, the following changes would be made in the regulations implementing the FMP.

The regulations applicable to Atlantic migratory groups of king and Spanish mackerels would apply within the area of authority of the Mid-Atlantic Fishery Management Council, that is, off the states from New York through Virginia. This action would provide management for the mackerel stocks that have recently extended their range to the mid-Atlantic area. Extension of management would comply with the requirement of the Magnuson Act that " * * * an individual stock of fish shall be managed as a unit throughout its range * * * ". This extension of the management unit is limited to king and Spanish mackerel because data do not indicate that catches of other coastal migratory pelagic fish have significantly increased north of their current management unit.

The fishing year for Gulf group Spanish mackerel would be revised from July 1 through June 30 to April 1 through March 31. In 1989, the commercial allocation for Gulf group Spanish mackerel was reached on April 6, prior to the typical high catch-rate season in the northern Gulf of Mexico. As a result, the net boats were virtually shut out of

the fishery. Change in the fishing year would distribute the commercial catch geographically into the northern Gulf of Mexico.

In order to comply with the new guidelines for FMPs established by 50 CFR part 602, the definition of "overfished" or "overfishing" would be revised. The revision provides that the determination of whether a stock is biologically overfished will be based on a target percentage level of spawning stock biomass per recruit to be recommended by the stock assessment panel and the Scientific and Statistical Committees, adopted by the Councils, and approved by the Regional Director under the stock assessment procedures of § 642.27. The target level may not be lower than 20 percent. In addition, "overfishing" would be separately defined for either a stock that is overfished or a stock that is not overfished.

A definition of "conflict" would be added. The FMP provides that, in the event of user or gear conflicts, the Secretary, after consultation with the Councils, may take specified action to separate the users to resolve the conflict. Conflict had not, heretofore, been defined. This definition would provide the intent of the Councils as to when measures to separate users may be employed.

The procedures for making annual preseason adjustments to MSYs, TACs, allocations, quotas, bag limits, or permits would specify that the South Atlantic Council is responsible for adjustments on Atlantic migratory groups of mackerels and the Gulf Council is responsible for adjustments on Gulf migratory groups. The proposed separation of responsibility would facilitate management procedures and would permit each Council's committees to concentrate on specific migratory groups.

The qualifications to obtain an annual vessel permit would be changed to specify that the ten-percent earned income from fishing requirement be met by a shareholder or officer (or the operator) when the vessel is owned by a corporation. This change is intended to reduce the practice of incorporating recreational vessels for the purpose of becoming eligible for a permit and, thus, allowing anglers to exceed the bag limits.

Recreational bag limits for mackerels would be revised from trip limits to daily bag limits with possession limited to one day's bag limit. A person who is on or who has fished on a charter vessel or headboat on a trip that spans more than 24 hours would be allowed to

possess no more than two daily bag limits, under certain specified conditions. Daily versus trip limits are expected to delay the attainment of the applicable annual recreational allocation and the possible consequent reduction of bag limits to zero. In effect, the recreational fisheries would be spread over a greater portion of the fishing year.

Amendment 5 proposes to prohibit the use of gear other than hook and line and run-around gillnets to fish in the EEZ for king mackerel from the Gulf migratory group, a stock that has been severely overfished. Currently, these two gears are the only ones in use for Gulf migratory group king mackerel, and purse seines and drift gillnets are specifically prohibited. Introduction of new and non-traditional fishing gear on a stock that has been severely overfished is not considered prudent because high catch-rate gear could cause a quota to be exceeded in a brief period. In addition, introduction of new gear could reduce the amount of king mackerel available to the current harvesters who are already on reduced quotas.

The fishery for cobia has exceeded its MSY every year since 1981. A daily bag limit of two fish per person is proposed to reduce the probability of stock depletion. The bag limit would apply in both the commercial and recreational fisheries. The Councils would include cobia in their annual preseason adjustments of MSYs, TACs, quotas, bag limits, or permits.

The proposed minimum size limit of 12 inches (30.5 centimeters) fork length or 14 inches (35.6 centimeters) total length for king mackerel is the same minimum size limit as currently exists for Spanish mackerel. Few king mackerel under the proposed minimum size limit are currently being harvested by hook and line. However, some fishermen are retaining undersized Spanish mackerel on the mistaken impression that they are king mackerel. A minimum size limitation for king mackerel identical with that for Spanish mackerel will facilitate compliance and reduce violations based on inaccurate identification. As is required for other species for which there is a minimum size limit, king mackerel would be required to be landed with head and fins intact so that size may be determined.

Amendment 5 would eliminate language from the FMP and the regulations that authorizes a fisherman to sell his catch of mackerel taken under a bag limit during periods when the commercial fishery is open. The Councils' intent is to remove Federal regulation in this regard so that state

laws, regulations, and licensing requirements may apply to such sales. The prohibition of sale of mackerel taken in the EEZ after a commercial closure would remain in effect for the area of the closure. The current language authorizing sale of mackerel caught under a bag limit does not contribute to conservation of mackerel and constitutes an unnecessary supersession of state laws.

A more detailed discussion of these measures and of the revised problems and objectives of the FMP are contained in Amendment 5, the availability of which was announced in the Federal Register on March 23, 1990 (55 FR 11414).

Additional Changes Proposed by NOAA

NOAA proposes to provide guidance to applicants regarding the time required to obtain a permit. Language is proposed that encourages applications to be submitted at least 60 days prior to the date on which the applicant desires to have the permit made effective. NOAA will, under normal circumstances, issue a permit within 30 days after receipt of a complete application.

Heretofore, NOAA has not charged a fee for permits in this fishery but now intends to do so. The Magnuson Act and Amendment 1 to the FMP authorize charging a fee for the issuance of a permit, such fee not to exceed the administrative costs incurred in issuing the permit. The final rule implementing Amendment 1 limited the amount of any fee to \$10, based on administrative cost estimate of similar permitting systems then in use in some states. Based on a detailed analysis of the direct and indirect administrative costs of issuing permits under the current requirements, NOAA proposes to charge \$23 for each permit issued under § 642.4.

NOAA proposes to clarify the requirement that fish subject to a minimum size limit be landed with head and fins intact. Specifically, it is proposed to add language that such fish may be eviscerated but must otherwise be maintained in a whole condition through landing. This clarification is required to prevent the practice of cutting out fillets from the whole fish at sea and landing both the fillets and the remaining fish racks. Technically, the rack can be measured to ascertain compliance with the minimum size limits. However, such practice provides opportunities to evade the minimum size limits through filleting undersized fish and discarding their racks. It is difficult to correlate the number of racks to the number of fillets and impossible to definitively determine fish sizes from the fillets.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by (Pub. L. 99-659), requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 5, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Under Secretary for Oceans and Atmosphere, NOAA, has initially determined that this proposed rule is not a "major rule" requiring the preparation of regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographical regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic markets.

The Councils prepared a regulatory impact review (RIR) which concludes that this rule, if adopted, would have the economic effects summarized as follows. The extension of management area to the Mid-Atlantic Council's area of authority could raise the cost of enforcing management measures but may have indirect benefits of constraining fishing mortality of mackerel to the accepted level. The change in fishing year for the Gulf group of Spanish mackerel would enable a more balanced distribution of the quota across geographical areas, particularly in Florida. Harvest cost may increase if the change would prompt movement of vessels to areas where fish congregate. The change in definitions of overfished and overfishing would allow the inclusion of socioeconomic factors in the determination of appropriate management measures while protecting stocks. The separation of responsibility

for pre-season adjustments of the Atlantic and Gulf groups of king and Spanish mackerel would facilitate the annual review and setting of TACs, now a shared responsibility of both Councils for all migratory stocks. This has required joint meetings of the Councils and consent of both to set each TAC. The change in bag limits from a trip to a daily basis would tend to distribute equally the recreational allocation among recreational fishermen. The for-hire sector would be minimally affected by this change. The deletion of language regarding sale of mackerel caught under a bag limit would eliminate conflict with and supersession of state laws and regulations, some of which provide for licensing of recreational and commercial fishermen and/or require a state license to sell fish. The prohibition on the use of gear types other than those currently used for the harvest of the Gulf group king mackerel would have no short-term effects. However, the long-term efficiency of this segment of the commercial fishery may be jeopardized by ruling out usage of more efficient gear types. The bag limit for cobia would have minimal impacts on both the commercial and recreational sectors. The minimum size limit for king mackerel would minimally impact the commercial sector. The impact of this size limit on the recreational sector is not known, but is expected to be minimal. Copies of the RIR may be obtained from the address listed above.

The RIR prepared by the Councils concludes that this rule will not have a significant economic impact on a substantial number of small entities for the reasons summarized as follows. The two-fish bag limit on cobia (1) will have virtually no impact on the commercial sector as commercial vessels generally catch only one or two cobia per trip and (2) will reduce landings of cobia by charter boats on only 4 percent of charter boat trips. The minimum size limit on king mackerel will not have a significant effect on commercial fishermen because only a few king mackerel less than the minimum size limit are caught by them. The extension of the management unit for king and Spanish mackerel into the Mid-Atlantic Fishery Council's area will not affect a substantial number of entities because (1) the landings of Spanish mackerel from that area are small (381,000 pounds in 1987) and less than 5 percent of those landings were from the EEZ, and (2) the landings of king mackerel from that area are even smaller (150,000 pounds) with an unknown portion of those landings coming from the EEZ. Accordingly, the General Counsel of the Department of

Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities; and an initial regulatory flexibility analysis was not prepared.

The Councils have determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, Mississippi, North Carolina, South Carolina, New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia. Texas and Georgia do not have approved coastal zone management programs. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

The Councils prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained at the address listed above and comments on it are requested.

This proposed rule does not contain a new collection-of-information requirement for purposes of the Paperwork Reduction Act. However, expansion of the management area will affect two information collections approved under Office of Management and Budget control numbers 0648-0013 and 0648-0205.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 16, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

For the reasons set forth in the preamble, 50 CFR part 642 is proposed to be amended as follows:

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 642.1, paragraph (b) is revised to read as follows:

§ 642.1 Purpose and scope.

(b) This part governs conservation and management of—

(1) King and Spanish mackerel off the Atlantic coastal states south of the New York/Connecticut border and off the Gulf of Mexico coastal states; and

(2) All other coastal migratory pelagic fish off the Atlantic coastal states south of the Virginia/North Carolina border and off the Gulf of Mexico coastal states.

3. In § 642.2, the definition of *Overfishing* or *overfished* is removed and new definitions of *Conflict*, *EEZ*, *Overfished*, and *Overfishing* are added in alphabetical order to read as follows:

§ 642.2 Definitions.

Conflict means an incident at sea involving one or more fishing vessels—

(a) In which contact between one fishing vessel or its gear with another vessel or gear results in damage or destruction of fishing gear, loss of gear and associated catch through disappearance of the gear or its location buoys, preemption of fishing grounds, removal of catch from the gear, or vessel collision;

(b) In which there is imminent threat of one fishing vessel or its gear coming into contact with another vessel or gear; or

(c) In which competition for a resource between one fishing vessel or its gear and another vessel or gear—

(1) Results in displacement of a traditional fishery by new gear,

(2) Results in reduced catches in the traditional fishery, or

(3) Leads the Gulf of Mexico and South Atlantic Fishery Management Councils to conclude that the situation will result in displacement of a traditional fishery by new gear or in reduced catches in the traditional fishery. Competition is not in and of itself conflict; however, when competition is intensified, it can lead to conflict.

EEZ, as defined in § 620.2,

(a) For requirements related to king and Spanish mackerel, means the EEZ off the Atlantic coastal states south of the new York/Connecticut border and off the Gulf of Mexico coastal states;

(b) For requirements related to all other coastal migratory pelagic fish except bluefish, means the EEZ off the Atlantic coastal states south of the Virginia/North Carolina border and off the Gulf of Mexico coastal states; and

(c) For requirements related to bluefish, means the EEZ off the Gulf of Mexico coastal states.

Overfished means that the spawning stock biomass per recruit (SSBR) of a

mackerel or cobia stock is less than the target level percentage recommended and approved in accordance with the stock assessment procedures. The target level percentage will be recommended by the assessment group and approved by the Scientific and Statistical Committees of the Gulf of Mexico and South Atlantic Fishery Management Councils, and may not be less than 20 percent.

Overfishing means—

(a) That an overfished stock is being harvested at a rate that is not consistent with a program that has been established to rebuild the stock to the target level percentage; or

(b) That a stock that is not overfished is being harvested at a rate that, if continued, would lead to a state of the stock that would not allow a harvest at least equal to optimum yield on a continuing basis.

4. In § 642.4, a new paragraph (a)(4) is added; and paragraphs (b)(1), (c), and (d) are revised to read as follows:

§ 642.4 Permits and fees.

(a) * * *

(4) For a corporation to be eligible for an annual vessel permit specified in paragraph (a)(1) of this section, the earned income qualification specified in paragraph (b)(2)(vi) of this section must be met by, and the statement required by that paragraph must be submitted by, a shareholder or officer of the corporation or the vessel operator.

(b) * * *

(1) An application for a permit may be submitted to the Regional Director at any time but should be submitted at least 60 days prior to the date on which the applicant desires to have the permit made effective. An application must be signed by the owner or operator.

(c) **Issuance.** The Regional Director will issue a permit at any time for an April through March permit year. Upon receipt of a complete application, a permit will normally be issued in 30 days but may take as long as 60 days during peak periods of activity (February and March) or when complications exist. Until an annual vessel permit specified in paragraph (a)(1) of this section is on board, bag limits apply.

(d) **Fees.** A fee of \$23 will be charged for each permit issued under paragraph (a) of this section. The appropriate fee must accompany each permit application.

5. In § 642.5, a new paragraph (f) is added to read as follows:

§ 642.5 Recordkeeping and reporting.

(f) For an owner or operator of a commercial, charter, or recreational vessel or a dealer or processor in the states from New York through Virginia, or in the waters off those states, for the purposes of paragraphs (c) and (e) of this section, the term "Science and Research Director" means the Science and Research Director, Northeast Fisheries Center, NMFS, Woods Hole, MA 02543, telephone 617-548-5123, or a designee.

6. In § 642.7, in paragraph (i), the words "vessel identification" between the words "official" and "number" are removed; in paragraphs (k) and (m), the references to "§ 642.28(c)(2)" are revised to read "§ 642.28(a)(4)(ii)"; in paragraph (1), the reference to "§ 642.24(c) or (d)" is revised to read "§ 642.24(b)(1) or (c)"; paragraphs (p) and (s) are removed and reserved; paragraph (x) is removed; and paragraphs (b), (d), (e), (j), (n), (q), (t), and (u) are revised to read as follows:

§ 642.7 Prohibitions.

(b) Possess in or harvest from the EEZ king or Spanish mackerel under the minimum size limit specified in § 642.23(a)(1), except for the catch allowance specified in § 642.23(a)(2).

(d) Fish in the EEZ for coastal migratory pelagic fish with prohibited gear or possess any coastal migratory pelagic fish in or from the EEZ aboard a vessel with prohibited gear aboard, as specified in § 642.24(a).

(e) Fish in the EEZ for king or Spanish mackerel with a gillnet with a mesh size less than the minimum allowable, or possess king or Spanish mackerel in or from the EEZ on board a vessel that has aboard a gillnet with a mesh size less than the minimum allowable, as specified in § 642.24(b).

(j) Purchase, barter, trade or sell, for the remainder of the appropriate fishing year, king or Spanish mackerel harvested in the EEZ from a specific migratory group or zone after the commercial allocation or quota for that migratory group or zone in § 642.21(a) or (c) has been reached and closure under § 642.22(a) has been invoked, as specified in § 642.28(a)(4)(iii). (This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.)

(n) Land, consume at sea, sell, or have in possession at sea or at time of landing

king mackerel, Spanish mackerel, or cobia in excess of the bag limits specified in § 642.28 (a) and (b).

(q) Possess or land king mackerel, Spanish mackerel, or cobia without the head and fins intact, as specified in § 642.23(c).

(t) Operate a vessel in the EEZ with king mackerel, Spanish mackerel, or cobia aboard in excess of the cumulative bag limit applicable to the vessel, as specified in § 642.28(d).

(u) Transfer king mackerel, Spanish mackerel, or cobia at sea, as specified in § 642.28(e).

7. Section 642.20 is revised to read as follows:

§ 642.20 Seasons.

The fishing year for the Gulf migratory group of king mackerel for allocations and quotas begins on July 1 and ends on June 30. The fishing year for the Atlantic migratory groups of king and Spanish mackerel and the Gulf group of Spanish mackerel begins on April 1 and ends on March 31. The fishing year for all other coastal migratory pelagic fish begins on January 1 and ends on December 31.

8. In § 642.21, paragraphs (a)(3) and (c)(3) are revised to read as follows:

§ 642.21 Allocations and quotas.

(a) * * *

(3) A fish is counted against the commercial quota or allocation for the area where it is caught when it is first sold.

(c) * * *

(3) A fish is counted against the commercial allocation for the area where it is caught when it is first sold.

9. Section 642.23 is revised to read as follows:

§ 642.23 Size restrictions.

(a) **King and Spanish mackerel—(1) Minimum size.** The minimum size limit for the possession of king or Spanish mackerel in or taken from the EEZ is 12 inches (30.5 centimeters) fork length or 14 inches (35.6 centimeters) total length for both recreational and commercial fisheries, except for the incidental catch allowance under paragraph (a)(2) of this section.

(2) Catch allowance.

(i) A catch of king mackerel under the minimum size limit is allowed in the commercial fishery equal to five percent by weight of the total catch of king mackerel on board.

(ii) A catch of Spanish mackerel under the minimum size limit is allowed in the commercial fishery equal to five percent by weight of the total catch of Spanish mackerel on board.

(b) *Cobia*. The minimum size limit for the possession of cobia in or taken from the EEZ is 33 inches (83.8 centimeters) fork length or 37 inches (94.0 centimeters) total length for both recreational and commercial fisheries.

(c) *Head and fins intact*. A Spanish mackerel, king mackerel, or cobia possessed in the EEZ must have its head and fins intact and a Spanish mackerel, king mackerel, or cobia taken from the EEZ must have its head and fins intact through landing. Such Spanish mackerel, king mackerel, or cobia may be eviscerated but must otherwise be maintained in a whole condition.

10. Section 642.24 is revised to read as follows:

§ 642.24 Vessel, gear, equipment limitations.

(a) *Prohibited gear*—(1) *Drift gillnets*. The use of a drift gillnet to fish in the EEZ for coastal migratory pelagic fish is prohibited. A vessel in the EEZ or having fished in the EEZ with a drift gillnet aboard may not possess any coastal migratory pelagic fish.

(2) *Other Gear*.

(i) Fishing gear is prohibited for use in the EEZ for migratory groups of King and Spanish mackerel as follows:

(A) King mackerel Gulf migratory group—all gear other than hook-and-line and run-around gillnets.

(B) Spanish mackerel Gulf and Atlantic migratory groups—purse seines.

(ii) A vessel in the EEZ in an area specified in § 642.29 for a migratory group or having fished in the EEZ in such area with prohibited gear aboard may not possess any of the species for which that gear is prohibited.

(b) *Gill nets*—(1) *king mackerel*. The minimum allowable mesh size for a gillnet used to fish in the EEZ for King mackerel is 4¼ inches (12.1 centimeters) (stretched mesh). A vessel in the EEZ or having fished in the EEZ with a gillnet aboard that has a mesh size less than 4¼ inches (12.1 centimeters) may possess an incidental catch of King mackerel that does not exceed 10 percent of the total lawfully possessed catch by number of Spanish mackerel on board.

(2) *Spanish mackerel*. The minimum allowable mesh size for a gillnet used to fish in the EEZ for Spanish mackerel is 3½ inches (8.9 centimeters) (stretched mesh). A vessel in the EEZ or having fished in the EEZ with a gillnet aboard that has a mesh size less than 3½ inches

(8.9 centimeters) may not possess any Spanish mackerel.

(c) *Purse seine catch allowance*. A vessel in the EEZ or having fished in the EEZ with a purse seine aboard will not be considered as fishing or having fished for king or Spanish mackerel in violation of a prohibition of purse seines under paragraphs (a)(2) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 642.22(a), provided the catch of king mackerel does not exceed one percent or the catch of Spanish mackerel does not exceed 10 percent of the catch of all fish aboard the vessel. Incidental catch shall be calculated by both number and weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the allocations and quotas provided for under § 642.21 (a) or (c) and are subject to the prohibition of sale under § 642.22(a).

11. In § 642.27, in paragraph (e), at the end of the first sentence the phrase, "prior to the appropriate fishing year" is removed; and paragraphs (a) and (c) are revised to read as follows:

§ 642.27 Stock assessment procedures.

(a) The Councils will appoint an assessment group (Group) that will assess the condition of each stock of King mackerel, Spanish mackerel, and cobia in the management unit on an annual basis. Such assessment will include determinations of overfished and overfishing. When a determination of overfishing is made for a stock, the group will develop and recommend appropriate ABC ranges for recovery periods consistent with a program to rebuild in overfished stock. The Group will present a report of its assessment and recommendations to the Councils.

(c) If changes are needed in MSYs, TACs, allocations, quotas, bag limits, or permits, the Councils will advise the Regional Director in writing of their recommendations, accompanied by the assessment group's report, relevant background material, and public comment. Recommendations for the Atlantic groups of king and Spanish mackerel will be the responsibility of the South Atlantic Council, and recommendations for the Gulf groups of king and Spanish mackerel will be the responsibility of the Gulf Council. The Councils' reports shall be submitted each year by such date as may be specified by the Councils.

12. Section 642.28 is revised to read as follows:

§ 642.28 Bag and possession limits.

(a) *King and Spanish mackerel*—(1) *Bag limits*. A person who fishes for king or Spanish mackerel from the Gulf or Atlantic migratory group in the EEZ, except a person fishing under a permit specified in § 642.4(a)(1) and an allocation specified in § 642.21 (a) or (c), or possessing the purse seine incidental catch allowance specified in § 642.24(d), is limited to the following:

(i) *King mackerel Gulf migratory group*. (A) Possessing three king mackerel per person per day, excluding the captain and crew, or possessing two king mackerel per person per day, including the captain and crew, whichever is the greater, when fishing from a charter vessel.

(B) Possessing two king mackerel per person per day when fishing from other vessels.

(ii) *King mackerel Atlantic migratory group*. (A) Possessing two king mackerel per person per day from the southern area.

(B) Possessing three king mackerel per person per day from the northern area.

(iii) *Spanish mackerel Gulf migratory group*. (A) Possessing four Spanish mackerel per person per day from the eastern area.

(B) Possessing ten Spanish mackerel per person per day from the western area.

(iv) *Spanish mackerel Atlantic migratory group*. (A) Possessing four Spanish mackerel per person per day from the southern area.

(B) Possessing ten Spanish mackerel per person per day from the northern area.

(2) *Multi-day possession limit*. A person subject to a bag limit specified in paragraphs (a)(1) of this section may not possess in or from the EEZ during a single day, regardless of the number of trips or the duration of a trip, any king or Spanish mackerel in excess of such bag limit, except that a person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided such trip is aboard a charter vessel or headboat, and,

(i) The vessel has two licensed operators aboard as required by the U.S. Coast Guard for trips of over 12 hours, and

(ii) Each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(3) *Areas*. (i) For the purposes of paragraphs (a)(1) (ii) and (iv) of this section, the boundary between the northern and southern areas is a line extending directly east from the

Georgia/Florida boundary (30°42'45.6" N. latitude) to the outer limit of the EEZ.

(ii) For the purposes of paragraph (a)(1)(iii) of this section, the boundary between the eastern and western areas (identical to the eastern and western zones in the commercial fishery) is a line extending directly south from the Alabama/Florida boundary (87°31'06" W. longitude) to the outer limit of the EEZ.

(4) *Fishing after a closure.* After a closure under § 642.22(a) is invoked for a commercial allocation or quota specified in § 642.21(a) or (c), for the remainder of the fishing year specified in § 642.20:

(i) A vessel permitted under § 642.4(a)(1) to fish under a commercial allocation for mackerel may not fish under a bag limit specified in paragraph (a)(1) of this section for the closed species/migratory group/zone, except as

provided for under paragraph (a)(4)(ii) of this section.

(ii) A charter vessel permitted to fish under a commercial allocation for mackerel may continue to harvest fish under a bag and possession limit specified in paragraphs (a)(1) and (2) of this section provided it is under charter and the recreational allocation for the respective migratory group of mackerel under § 642.21(b) or (d) has not been reduced to zero under § 642.22(b).

(iii) The purchase, barter, trade, or sale of king or Spanish mackerel taken in the EEZ from the closed area is prohibited.

(b) *Cobia.* The daily bag and possession limit for cobia in or from the EEZ of the Gulf of Mexico and the Atlantic Ocean south of the Virginia/North Carolina border is two fish per person, without regard to whether or not the cobia are taken aboard a vessel with a commercial permit.

(c) *Combination of bag limits.* A person who fishes in the EEZ may not combine a bag or possession limit of this part with any bag or possession limit applicable to state waters.

(d) *Responsibility for bag and possession limits.* The operator of a vessel that fishes in the EEZ is responsible for the cumulative bag limit, $\frac{1}{4}$ $\frac{1}{4}$ $\frac{1}{4}$ based on the number of persons aboard, applicable to that vessel.

(e) *Transfer of fish.* A person who whom a bag or possession limit specified in this section applies may not transfer at sea king mackerel, Spanish mackerel, or cobia—

(1) Taken in the EEZ; or

(2) In the EEZ, regardless of where such king mackerel, Spanish mackerel, or cobia was taken.

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